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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/504,813	05/12/2005	Hiroki Sadato	FA/250	2396

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Gore Enterprise Holdings Inc
551 Paper Mill Road
P O Box 9206
Newark, DE 19714-9206

EXAMINER	
DESAI, ANISH P	
ART UNIT	PAPER NUMBER
1794	

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11/30/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/504,813	SADATO ET AL.	
	Examiner	Art Unit	
	ANISH DESAI	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,16 and 17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,16 and 17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed on 09/03/09 after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/03/09 has been entered.

2. All of the previously made art rejections are maintained. English translation of Ogata et al. (JP 05-031854) is provided.

3. The art rejections to claims 6 and 7 as set forth in the previous Office action are modified in view of newly discovered reference of Lin et al. (US 6,040,254).

4. A new 35 USC Section 103(a) rejection to claim 2 based on Ogata et al. (JP 05-031854) in view of Lumb et al. (US 5,204,156) is made.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogata et al. (JP 05-031854)**.

6. Ogata teaches a laminated cloth having a plastic film that is bonded to the rear of denim base cloth (equated to applicant's back textile) via a water-insoluble adhesive layer and a lining of cotton cloth (equated to applicant's face textile) is laminated to the plastic film via water-soluble adhesive (see abstract). It is noted that applicant and Ogata both disclose adhesives such as polyacrylaminde, polyvinyl alcohol as a water-soluble temporary adhesive (see 0054 of US Patent Application Publication 2005/0208854A1 and 0013 of Ogata). Therefore, the water-soluble adhesive of Ogata is equated to the temporary adhesive. Accordingly, Ogata anticipates the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. **Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogata et al. (JP 05-031854) In view of Lumb et al. (US 5,204,156)**.

8. Ogata discloses laminated cloth as described above, however, Ogata is silent as to teaching claim 2.

9. However, Lumb teaches a stretchable, drapable, windproof, water resistant and water vapor permeable composite fabric (equated to applicant's laminated fabric) (abstract). Further, as shown in Figure 3 and at column 5 lines 1-11, the laminated fabric of Lumb includes an inner fabric layer 16 and an outer fabric layer 22 that are bonded to a waterproof moisture vapor permeable barrier layer 18 (abstract) using adhesive layer(s) 15.

10. At column 2 lines 15-20, Lumb discloses that the barrier layer is constructed to prevent air and water droplets from passing through the fabric layer while allowing the water vapor to travel therethrough. This renders, the fabric windproof, yet breathable

and water resistant. The barrier layer is equated to applicant's waterproof moisture vapor permeable film as presently claimed.

11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the waterproof moisture vapor permeable film (barrier layer) of Lumb in the invention of Ogata, motivated by the desire to form windproof, water resistant and breathable laminated fabric.

12. **Claims 1, 2, 8, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumb et al. (US 5,204,156) in view of Ogata et al. (JP 05-031854)**.

13. Lumb teaches a stretchable, drapable, windproof, water resistant and water vapor permeable composite fabric (equated to applicant's laminated fabric) (abstract). Further, as shown in Figure 3 and at column 5 lines 1-11, the laminated fabric of Lumb includes an inner fabric layer 16 (equated to face textile) and an outer fabric layer 22 (equated to back textiles) that are bonded to a waterproof moisture vapor permeable barrier layer 18 (abstract) using adhesive layer(s) 15. The adhesive of Lumb can be formed of polyurethane (column 5 lines 1-11), which is equated to the water-insoluble adhesive.

14. Lumb is silent as to teaching the inner fabric layer (face textile) is laminated with a temporary adhesive layer.

15. However, Ogata discloses a laminated cloth having a plastic film that is bonded to the rear of denim base cloth via a water-insoluble adhesive layer and a lining of cotton cloth that is laminated to the plastic film via water-soluble adhesive (see abstract). It is noted that applicant and Ogata both disclose adhesives such as polyacrylaminde, polyvinyl alcohol as temporary adhesive (see 0054 of Applicant's US Patent Application Publication 2005/0208854A1 and 0013 of Ogata). Therefore, the water-soluble adhesive of Ogata is equated to the temporary adhesive.

16. It is noted from paragraph 0016 of Ogata that the water-soluble adhesive of Ogata is used to temporary stick the lining cloth so that the sewing of the cloth can be carrier out easily. Further, the disclosure of Ogata at paragraphs 0016 is interpreted as Ogata bonds the inner lining (which comes in contact with the skin) to the film by water-soluble adhesive such that during the laundering, the water-soluble adhesive is removed. As a result, the lining will be loosely bonded to the plastic film (at the points where it was sewed), such that it provides soft and comfortable feeling when the clothing article of Ogata that is formed from such a laminated fabric is worn. It is noted that the laminated fabric of Lumb is also used as clothing article (e.g. outerwear) (column 1 lines 15-25). Further, the disclosure of Lumb at column 2 lines 20-25 (beginning at "The inner fabric layer may be rendered hydrophilic…") is interpreted as the inner fabric layer (face textile) of Lumb is facing inside (i.e. towards the skin) such that it can come in contact with the skin of the wearer.

17. Based on above, it would have been obvious to one having ordinary skill in the art at the time the invention was made to bond the inner fabric layer of the laminated fabric of Lumb using a water-soluble adhesive and sew the inner fabric layer as taught by Ogata, such that when the laminated fabric is washed, it will provide soft and comfortable feeling to the wearer.

18. Regarding claims 16 and 17, it is noted that at column 4 lines 55-60, Lumb discloses a fabric having 70-150 denier, which converts to 77 to 166.7 decitex (using 1 denier = 1.1 decitex). Alternatively, one of ordinary skill in the art can select a face textile with suitable decitex, motivated by the desire to provide durability and strength to the face textile.

19. **Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumb et al. (US 5,204,156) in view of Ogata et al. (JP 05-031854) as applied to claims 1 and 2, above, and further in view of Takahiro et al. (JP 2002-20916)**.

20. Lumb is silent as to teaching claims 3-5.

21. However, Takahiro discloses a film glove comprising a porous polytetrafluoroethylene (PTFE) film that is waterproof and moisture vapor permeable (see claim 1). Further, claim 4 of Takahiro discloses coating of the inside surface of the

pores of PTFE film with water and oil repellent polymer. Moreover, claim 3 of Takahiro discloses applying of a hydrophilic moisture-proof coating to the entire surface of one or both sides of the porous PTFE film. Further at paragraph 0004, Takahiro discloses the drawn PTFE film has a high porosity and excellent moisture permeability, and it is flexible because of this high porosity. In addition, the PTFE film itself repels water; therefore it has superior water resistance.

22. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the PTFE film as taught by Takahiro above and use it in the invention of Lumb as modified by Ogata as a waterproof moisture vapor permeable film, motivated by the desire to provide excellent moisture vapor permeability to the laminated fabric. Alternatively, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the PTFE film as taught by Takahiro above and use it in the invention of Lumb as modified by Ogata, because selection of a known material based on its suitability for its intended use supports a *prima facie* case of obviousness.

23. **Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumb et al. (US 5,204,156) in view of Ogata et al. (JP 05-031854) as applied to claim 1 above, and further in view of Wiedner et al. (US 5,461,724) and Lim et al. (US 6,040,254)**.

24. Lumb is silent as to teaching claims 6 and 7.

25. However, Wiedner's discloses an article of clothing for medical or chemical field for protection against liquids and/or microorganisms comprising three layers.

26. Regarding claim 6, Wiedner discloses that "For the purpose of pleasant and comfortable wearing of the article of clothing provision is made...**the inner layer is of lighter design than the outer layer**. This is also made possible by the fact that the inner layer which does not come in direct contact with the environment is subject to substantially less stress than the outer layer." (column 2 lines 55-60).

27. Thus regarding claim 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the face textile having weight greater than the weight of the back textile in Lumb, because selection of a known material based on its suitability for its intended use establishes a *prima facie* case of obviousness. Additionally, it would have been obvious to select the weight of one textile (e.g. face textile) greater than the other textile (e.g. back textile) for pleasant and comfortable wearing and since when the textile layer with weight greater than then other textile layer comes in contact with the environment that is subject to stress than such a textile layer (e.g. face textile) can withstand the stress.

28. Regarding claim 7, the outer layer of Wiedner's article is formed of a tightly woven hydrophobic fabric which forms a liquid barrier and a microorganism barrier (abstract and column 1 lines 55-60). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form applicant's

face textile from woven fabric in Lumb, motivated by the desire to provide protection against liquid and microorganisms. Additionally, as to the claim 7 requirement of the back textile is a knitted fabric, it is noted that Lim discloses a dustproof fabric that includes three integrated layers (abstract). Additionally, the inner layer of the dustproof fabric of Lim is formed of knit fabric having good strenght and resilience (column 2 lines 19-21). Thus, it would have been obvious to form the back textile as a knitted fabric in Lumb, motivated by the desire to provide good strength and resilience.

Response to Arguments

29. Applicant's arguments received on 09/03/09 have been considered but are moot in view of the new ground(s) of rejection.

30. **With respect to applicant's arguments with respect to 35 USC Section 102(b) rejection based on Ogata, the Examiner submits following**:

31. It is respectfully submitted the Examiner's interpretation of Ogata reference is different than applicant. Specifically, it appears that applicant is narrowly interpreting claim language of "face textile" and "back textile", and based on this applicant is asserting that in claim 1, the a front-surface fabric and durable film are laminated via *temporary adhesive such as water-soluble adhesive*, whereas in Ogata a denim

foundation such as the front-surface fabric and a plastic film are laminated via *water-insoluble adhesive*. However, the Examiner submits that the term "face textile" and "back textile" are not limited to the interpretation that the face textile is front-surface and the back textile is back surface. It is submitted that claims are given their broadest reasonable interpretation consistent with the specification. Further, while the claims are interpreted in light of the specification, it is improper to import limitations from the specification into claims. Additionally, the Examiner submits that that the present claims are drawn to a laminated fabric not a process of using the fabric or an article containing the fabric. Therefore, regardless of what the textile layers are labeled as, the claims broadly require a textile laminated on one side of a durable polymer film with a temporary adhesive and a textile laminated on the other side of the durable polymer film with water-soluble adhesive which is clearly disclosed by Ogata. Further, it is significant to note that the face textile of the present invention includes cotton which is identical to the textile being equated to the face textile in Ogata (and Lumb).

32. Based on above, the Examiner has a different interpretation of Ogata reference and how it applies to the presently claimed invention. Ogata teaches a laminated cloth having a plastic film that is bonded to the rear of denim base cloth (equated to applicant's back textile) via a water-insoluble adhesive layer and a lining of cotton cloth (equated to applicant's face textile) is laminated to the plastic film via water-soluble adhesive (see abstract). It is noted that applicant and Ogata both disclose adhesives such as polyacrylaminde, polyvinyl alcohol as a water-soluble temporary adhesive (see

0054 of US Patent Application Publication 2005/0208854A1 and 0013 of Ogata). Therefore, the water-soluble adhesive of Ogata is equated to the temporary adhesive. Accordingly, Ogata anticipates the claimed invention.

33. Further, it is noted that applicant has argued that "By employing the structure of claim 1, as mentioned below, remarkable effects that cannot be obtained with Ogata et al. structure can be gained."

34. In response, the Examiner submits that with respect to the anticipation rejection of the claims using Ogata et al., as cited in MPEP 706.02(b), it is noted that a rejection based on 35 USC 102(b), can only be overcome by (a) persuasively arguing that the claims are patentably distinguishable from the prior art, (b) amending the claims to patentably distinguish over the prior art, or (c) perfecting priority under 35 USC 119(e) or 120. As can be seen, comparative data is not sufficient to overcome an anticipatory rejection under 102(b). Additionally, as set forth in MPEP 2131.04, evidence of secondary considerations, such as unexpected results or commercial success, is irrelevant to 35 U.S.C. 102 rejections and thus cannot overcome a rejection so based. *In re Wiggins*, 488 F.2d 538, 543, 179 USPQ 421, 425 (CCPA 1973). Accordingly, applicant's arguments are not found persuasive and the art rejections are sustained.

35. Similar to the arguments made with respect to Ogata reference above, with respect to the 35 USC Section 103(a) rejections based on Lumb et al. in view of Ogata et al. , applicant argues following:

> Applicants respectfully submit that the characterization of the teachings of Lumb et al and Ogata et al are incorrect. Specifically, the inner fabric layer 16 indicated by Lumb et al. is equated to face textile and the outer fabric layer 22 is equated to back textile, but this characterization of Lumb et al. is inaccurate. Specifically, it is taught in lines 47-51 and 66-68 of column 4 of Lumb et al. that the inner fabric layer 16 is equated to the back textile of the present invention and the outer fabric layer 22 is equated to the face textile of the present invention. Accordingly, applicants respectfully submit that the combination of Lumb et al. and Ogata et al. do not disclose, suggest or render obvious any of claims 1, 2, 6-8, 16 and 17.

36. In response, the Examiner again respectfully submits that applicant is narrowly interpreting claim language of "face textile" and "back textile. It is submitted that claims are given their broadest reasonable interpretation consistent with the specification. Further, while the claims are interpreted in light of the specification, it is improper to import limitations from the specification into claims.

37. Additionally, as to applicant's arguments that column 4 lines 47-51 and lines 66-68 of Lumb teaches that the inner fabric layer is back textile of the *present invention* and the outer fabric is face textile of the *present invention*, it is submitted that these arguments are not found persuasive because Lumb does not teach that the inner fabric layer is equivalent to the back textile of *applicant's invention* and the outer fabric is

equivalent to the face textile of *applicant's invention*. The Examiner submits that his interpretation of Lumb reference is different than applicant's interpretation. Specifically, Lumb teaches a stretchable, drapable, windproof, water resistant and water vapor permeable composite fabric (equated to applicant's laminated fabric) (abstract). Further, as shown in Figure 3 and at column 5 lines 1-11, the laminated fabric of Lumb includes an inner fabric layer 16 (equated to face textile) and an outer fabric layer 22 (equated to back textiles) that are bonded to a waterproof moisture vapor permeable barrier layer (abstract) using adhesive layer(s) 15. The adhesive of Lumb can be formed of polyurethane (column 5 lines 1-11), which is equated to the water-insoluble adhesive. Accordingly, applicant's arguments are not found persuasive and the art rejections are sustained.

38. With respect to the art rejections of claims 6 and 7, it is noted that applicant has essentially incorporated same arguments as set forth above. Thus, in response, the Examiner has nothing more to add but to incorporate his rebuttal as set forth above here by reference.

Conclusion

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANISH DESAI whose telephone number is (571)272-6467. The examiner can normally be reached on Monday-Friday, 8:00AM-4:30PM.

40. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

41. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. D./
Examiner, Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794